

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

AARON A. NICKERSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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CASE NO. 1:18-cr-00278

OPINION & ORDER
[Resolving Doc. [32](#)]

JAMES S. GWIN, UNITED STATES DISTRICT COURT JUDGE:

Petitioner-Defendant Aaron A. Nickerson pleaded guilty to three counts of armed bank robbery under 18 U.S.C. § 2113 and one count of brandishing a firearm during a crime of violence under 18 U.S.C. § 924(c).

Now, Nickerson moves to vacate his sentence under 28 U.S.C. § 2255.¹ Relying on *United States v. Davis*,² Nickerson argues his § 924(c) conviction is unconstitutional. The Government opposes.³

For the following reasons, the Court **DENIES** Nickerson's motion to vacate his sentence.

I. Discussion

A federal prisoner who believes their "sentence was imposed in violation of the Constitution . . . may move the court which imposed the sentence to vacate . . . the sentence."⁴

¹ Doc. [32](#).

² [139 S.Ct. 2319 \(2019\)](#).

³ Doc. [35](#).

⁴ [28 U.S.C. § 2255\(a\)](#).

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In this case, Nickerson argues his § 924(c) conviction is unconstitutional in light of *Davis*.⁵ Nickerson is mistaken.

Section 924(c) authorizes an increased sentence for a person who uses or carries a firearm “during or in relation to” or who possesses a firearm “in furtherance of” a federal “crime of violence.”⁶ The statute defines a crime of violence in two provisions—the residual clause and the elements clause.⁷ In *Davis*, the Supreme Court held that § 924(c)’s residual clause was unconstitutionally vague.⁸ However, § 924(c)’s elements clause remains valid.⁹

As the government correctly points out, Nickerson’s § 924(c) conviction falls under the elements clause, not the residual clause.¹⁰ Resultingly, Nickerson’s conviction does not violate the Constitution.

II. Conclusion

For the foregoing reasons, the Court **DENIES** Nickerson’s motion to vacate his sentence as unconstitutional.

IT IS SO ORDERED.

Dated: April 5, 2021

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

⁵ [139 S.Ct. 2319 \(2019\)](#).

⁶ [18 U.S.C. § 924\(c\)\(1\)\(A\)](#).

⁷ [18 U.S.C. § 924\(c\)\(3\)](#); *see also Davis*, 139 S.Ct. at 2324.

⁸ *Davis*, 139 S.Ct. at 2336.

⁹ *See e.g., Knight v. U.S.*, 936 F.3d 495, 498 (6th Cir. 2019).

¹⁰ *See Wingate v. U.S.*, 969 F.3d 251, 263–64 (6th Cir. 2020); *see also U.S. v. McBride*, 826 F.3d 293, 295–96 (6th Cir. 2016).